Office-Supreme Court, U.S.
FILED
MAY 14 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 999

PEERLESS WEIGHING AND VENDING MACHINE CORPORATION, A CORPORATION,
Appellant,

vs.

PUBLIC BUILDING COMMISSION OF CHICAGO, A MUNICIPAL CORPORATION,
Appellee.

ON APPEAL FROM THE THREE JUDGE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

JURISDICTIONAL STATEMENT.

LOUIS M. MANTYNBAND,
SIDNEY R. ZATZ,
IRWIN I. ZATZ,
EDWARD J. HLADIS,
One North La Salle Street,
Chicago 2, Illinois,
Attorneys for Appellant.

ARVEY, HODES & MANTYNBAND,
Of Counsel.

THE BLAKELY-WARREN PRINTING COMPANY, CHICAGO

INDEX.

	PAGE
Opinion Below	2
Jurisdiction	2
Questions Presented	2
Statutes Involved	3
Statement	3
The Questions Are Substantial	9
Appendix A	21
Appendix B	33
Appendix C	64

CITATIONS.

Cases.

Ashton v. County of Cook, 384 Ill. 287	12
Barbier v. Connolly, 113 U. S. 217, 31	14
Berman v. Board of Education, 360 Ill. 535, 547	16
Boyd v. C. L. Ritter Lumber Company, 119 Va. 348, 369-370	10
Chicago, Burlington & Quincy Railroad Co. v. Chicago, 166 U. S. 226, 241	10
Chicago Housing Authority v. Abrams, 409 Ill. 226, 229-230	15
Eldred Drainage and Levee District v. Wilcoxson, 365 Ill. 249, 253	14
Florida Lime and Avocado Growers, Inc. v. Jacobson, 362 U. S. 73	2

Hairston v. Danville and Western Railway Company, 208 U. S. 598, 605 10

Huntington v. Laidley, 176 U. S. 668, 678-679 18

Madisonville Traction Company v. St. Bernard Mining Company, 196 U. S. 239, 251-252 10

People v. Public Building Commission, 11 Ill. 2d 125 19

People v. The Illinois Toll Highway Commission, 3 Ill. 2d 218, 230 16

Price v. City of Mattoon, 364 Ill. 512, 514 18

Salisbury Land & Improvement Company v. Commonwealth, 215 Mass. 371, 377 10

Sleight v. People, 74 Ill. 47, 49-50 16

United States v. Rice, 327 U. S. 742, 747 17

Statutes.

Chapter 34, Sections 3301, et seq., Ill. Rev. Stats. 1961 ..... 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, 15, 19

Chapter 47, Section 10, Ill. Rev. Stats., 1961 ..... 3, 4, 14, 15

Chapter 94, Section 23, Ill. Rev. Stats., 1961 11

Illinois Constitution of 1870, Article IV, Section 20 .. 16

Illinois Constitution of 1870, Article IX, Section 9 .. 16

Title 28 U. S. C. 1253 2

Title 28 U. S. C. 1331 2

Title 28 U. S. C. 1447(d) 17

Title 28 U. S. C. 2101(c) 2

Title 28 U. S. C. 2281, 2284 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. .....

PEERLESS WEIGHING AND VENDING MACHINE CORPORATION, A CORPORATION,

Appellant,

vs.

PUBLIC BUILDING COMMISSION OF CHICAGO, A MUNICIPAL CORPORATION,

Appellee.

ON APPEAL FROM THE THREE JUDGE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

JURISDICTIONAL STATEMENT.

Appellant appeals from the judgment of the Three-Judge United States District Court for the Northern District of Illinois, Eastern Division, entered on February 14, 1962, dismissing the cause for want of jurisdiction, and submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW.

The opinion of the Three-Judge Court for the Northern District of Illinois, Eastern Division, is attached hereto as Appendix A.

JURISDICTION.

This suit was brought to declare Section 14.1 of the Public Building Commission Act[1] of Illinois unconstitutional and void and to enjoin the appellee from proceeding with an eminent domain proceeding in the Circuit Court of Cook County, Illinois, under that Act as amended by Section 14.1. Jurisdiction of the District Court was based upon the provisions of 28 U.S.C. Section 1331, in that the matter in controversy exceeds the sum of $10,000, exclusive of interest and costs, and that the action arises under Section 1 of the Fourteenth Amendment to the Constitution of the United States.

The three-judge court was convened pursuant to the provisions of 28 U.S.C. Sections 2281 and 2284.

The judgment of the District Court was entered on February 14, 1962 and Notice of Appeal was filed in that Court on April 17, 1962.

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Sections 1253 and 2101(c). *Florida Lime and Avocado Growers, Inc.* v. *Jacobsen*, 362 U. S. 73.

QUESTIONS PRESENTED.

1. Does the due process clause of the Fourteenth Amendment countenance State legislation which authorizes a public body to mortgage condemned land immediately upon its being taken, and empowers it to provide for for-

1. Chapter 34, Section 3314.1, Illinois Revised Statutes, 1961; *post*, pp. 50-53.

feiture of the land to private lenders at public or private sale without notice, before the land is devoted to a public purpose?

2. Does the equal protection of the laws clause of the Fourteenth Amendment permit legislation which, by creating a condemning body with no means to pay damages, denies to landowners whose land is sought to be taken by it the protection of previously existing statutes providing for the payment of damages to landowners by condemning bodies in the event of abandonment or dismissal of condemnation proceedings?

STATUTES INVOLVED.

The Public Building Commission Act,[2] as amended by Section 14.1, and Section 10 of the Illinois Eminent Domain Act of April 10, 1872,[3] as amended, are set forth in Appendix B and Appendix C, attached hereto.

STATEMENT.

The appellant is the owner of a contiguous plot of land, approximately 54,560 square feet, constituting almost an entire city block. This plot of land is located in the central business district of the City of Chicago, which is commonly known as the "Loop". The value of this land is the highest in the City of Chicago. It is improved with a parking facility and commercial buildings.[4]

The Public Building Commission Act was enacted "to make possible the construction, acquisition or enlargement of buildings to be made available for use by governmental agencies with the intent and purpose of centralizing, inso-

2. Chapter 34, Sections 3301, *et seq.*, Illinois Revised Statutes, 1961; *post*, pp. 33-63.

3. Chapter 47, Section 10, Illinois Revised Statutes, 1961; *post*, pp. 64-65.

4. R. 12.

far as practicable, the activities of the different branches of government."[5]

The Public Building Commission of Chicago, appellee herein, was organized under this Act in 1956[6].

Section 14(b) of the Public Building Commission Act gives the Commission the power to acquire real property by the exercise of the power of eminent domain and authorizes the exercise of the power in accordance with the provisions of the Eminent Domain Act of April 10, 1872.[7]

Section 10 of the Eminent Domain Act, as amended, provides that, in the event condemnor shall dismiss the condemnation proceedings before the entry of an order awarding compensation, or shall fail to make payment of full compensation within the time named in such order, the court shall, upon the application of the defendant in the eminent domain proceedings, order the condemnor to pay all costs, expenses and reasonable attorneys' fees paid or incurred by such defendant in defense of the petition for condemnation, in addition to taxable costs.[8]

The Commission has no power to tax. It has no property, funds, or financial resources.

Under the Public Building Commission Act it is given the power to accept cash grants and donations,[9] but, as of the hearing herein, it has received none.[10] The Act merely authorizes the Commission, which is made a municipal corporation and body politic,[11] to issue and sell bonds for

5. Chapter 34, Section 3302, Illinois Revised Statutes, 1961; *post*, p. 34.

6. R. 4-5.

7. Chapter 34, Section 3314(b), Illinois Revised Statutes, 1961; *post*, pp. 46-47.

8. Chapter 47, Section 10, Illinois Revised Statutes, 1961; *post*, pp. 64-65.

9. Chapter 34, Section 3314(1), Illinois Revised Statutes, 1961; *post*, p. 49.

10. R. 14.

11. Chapter 34, Section 3314, Illinois Revised Statutes, 1961; *post*, p. 44.

the acquisition of sites and the erection and maintenance of buildings, which are to be paid and discharged from rentals, received from other municipalities or private parties.[12] The Act, as initially enacted, did not contemplate payment for any acquisition of property except from the proceeds of the bonds. The Act specifically provides "that no lien upon any physical property of the Commission shall be created" by any pledge and "no bond issue under this Act shall constitute a debt of the Commission or of any public body within the meaning of any statutory or constitutional limitation as to debt".[13] The Commission never issued or sold any bonds.[14]

The Commission selected a site for the proposed Civic Center on June 8, 1959, which includes the appellant's property. This site was approved by the City Council of the City of Chicago on April 27, 1960.[15]

Six years after the passage of the Public Building Commission Act, the General Assembly of Illinois as an amendment to the Act enacted Section 14.1, which is challenged herein. Appellant contends that the Public Building Commission Act, as so amended, and any exercise of the power of eminent domain thereunder constitutionally are invalid.[16] It authorizes the Commission to effect interim financing in advance of permanent financing. The proceeds of this interim financing are to be devoted exclusively to land acquisition. The Commission is empowered to issue interim notes and these notes are to be retired immediately upon the issuance and sale of bonds.

To secure the payment of such interim notes, the Com-

12. Chapter 34, Section 3314(m), Illinois Revised Statutes, 1961; *post*, p. 49.

13. Chapter 34, Section 3315, Illinois Revised Statutes, 1961; *post*, pp. 53-58.

14. R. 6.

15. R. 21.

16. Chapter 34, Section 3314.1, Illinois Revised Statutes, 1961; *post*, pp. 50-53.

mission is authorized to "pledge or mortgage all or any part of the property to be acquired with the proceeds of the interim notes, or provide otherwise for the sale, public or private and with or without notice, of all or any part of the property, in the event of default in payment of principal of or interest on the interim notes or on any covenant or agreement of the Commission in connection with the interim notes, and in the event of any such default to permit the acceleration of the maturity of the interim notes."

Section 14.1 makes no provision whatever to enable a public building commission to acquire funds in order that it might respond and pay the owner's costs and expenses in the event of abandonment or dismissal of an eminent domain proceeding to which the owner is entitled by virtue of Section 10 of the Eminent Domain Act of 1872.

On August 10, 1961, the Commission adopted Resolution No. 18 purporting to approve and accept a bank credit agreement and authorizing and directing its chairman and secretary to execute this agreement on behalf of the Commission with six major banks of the City of Chicago.[17]

Pursuant to this agreement the banks agreed to lend to the Commission on or before August 31, 1964 a sum of money not to exceed $12,000,000 to be used solely for the acquisition of the land for the Civic Center Site.[18] The interim notes, which evidence these borrowings and which shall mature on or before December 31, 1964, shall be payable solely from the income derived from the acquired property and from the proceeds of the sale of bonds.[19]

The Commission is further required to operate the acquired properties in an efficient and businesslike manner in

17. R. 19-36.
18. R. 23.
19. R. 26.

order to produce the maximum amount of net revenue until the date that permanent financing through the sale of the bonds is obtained. The Commission cannot make any substitutions, additions or improvements on the site. It is prohibited from removing or demolishing any building or improvement on the acquired sites without the written consent of the holders of at least two-thirds in the principal amount of the outstanding notes.[20]

To secure the payment of these interim notes, the Commission pledges to the banks all income derived from the property acquired with the proceeds of the notes.[21] Upon the request of the holders of at least two-thirds of the principal amount of outstanding notes, the Commission agrees to mortgage all or any part of the acquired property in a manner satisfactory to the banks.[22]

In the event of default, the Commission, upon the written demand of the holders of at least 51% of the principal amount of outstanding notes, must sell all or any portion of the site at a public or private sale upon such terms and conditions as are agreeable to the holders upon their command and without the necessity of resorting to judicial proceedings. If said sale is not completed within one hundred eighty (180) days, the holders of the interim notes may institute an appropriate action in a court of competent jurisdiction for an order to sell such property at public or private sale. The Commission agrees to enter its appearance in such proceedings and to consent to any such sale. Any of the banks has the right to acquire all or any portion of the Civic Center Site at such sale and the amount of principal and interest then owing on the interim note held by such bank shall be applied to the purchase price.[23]

---

20. R. 29-30.
21. R. 31.
22. R. 31.
23. R. 32-33.

On August 10, 1961, the appellee by its Board of Commissioners authorized and directed its chairman and secretary to execute an additional agreement on behalf of the appellee. Under the terms of this additional agreement, the same banks agree to loan to the appellee an amount of money not to exceed $600,000 for necessary operating expenses upon terms and conditions which are substantially identical to those of the bank credit agreement which was authorized by Resolution No. 18.[24]

On September 12, 1961, the appellee purporting to act in accordance with the authorizing provisions of the Public Building Commission Act, as amended, instituted an eminent domain proceeding in the Circuit Court of Cook County, Illinois, entitled *Public Building Commission of Chicago* v. *Continental Illinois National Bank and Trust Company of Chicago, Trustee, et al.*, case No. 61 C 12807, for the purpose of condemning the property owned by the appellant.[25]

As of the date of the filing of this Federal proceeding, January 11, 1962, the appellant had already incurred expenses which are compensable under Section 10 of the Eminent Domain Act of April 10, 1872 in the approximate amount of $40,000. The total compensable cost of the appellant's defense on the complete trial will reach an approximate amount of $100,000.[26]

On March 2, 1961, the appellee by its Board of Commissioners adopted Resolution No. 14 purporting to authorize its chairman and secretary to execute with four firms of architects a contract for the design of the Civic Center project. Prior to this date, the appellee Commission had received a planning advance from the Community Facilities Administration of the Housing and Home Finance

24. R. 37-43(a).
25. R. 13-14.
26. R. 50-51.

Agency of the United States of America in the sum of $1,500,000, used solely for the payment of cost of plans for the civic project and for no other purpose. The contract of the four architectural firms provides among other things that the architects agree to prepare plans within the 420 days after the date of execution thereof, and that the sum of $1,500,000 to be received from the Federal agency shall constitute the sole reimbursement to the architects if the appellee Commission for any reason is unable to issue and sell bonds and complete the project.

The appellee Commission has no funds, property or assets, other than the $1,500,000, which must be devoted exclusively to the planning of the proposed project. It presently has no funds for the payment of a condemnation award or for the payment of the appellee's costs and expenses in the event the aforementioned eminent domain proceedings is dismissed or abandoned.[27]

As stated previously, the Commission has no taxing power. It has not issued or sold any bonds since its organization and establishment on June 12, 1956. It has not received or accepted any donations, contributions, capital grants or gifts from any private or governmental sources.

THE QUESTIONS ARE SUBSTANTIAL.

I.

The first constitutional issue, presented in this proceeding, is fundamental. It goes to the very heart of a State's power of eminent domain.

Does the due process clause of the Fourteenth Amendment countenance State legislation which authorizes a public body to mortgage condemned land and empowers it to provide for forfeiture of the land to private lenders at

27. R. 14-15.

public or private sale, without notice, before the land is devoted to a public purpose?

It is settled that State legislation relative to eminent domain must satisfy the due process provisions of the Fourteenth Amendment to the Constitution of the United States. *Chicago, Burlington & Quincy Railroad Co.* v. *Chicago*, 166 U. S. 226, 241. These federal requirements are not fulfilled solely by the payment of just compensation to the landowner. It is also essential that the condemned land be taken for a public use. If the condemnation is for a private use, or will result in a private use, it is forbidden by the Fourteenth Amendment. *Madisonville Traction Company* v. *St. Bernard Mining Company*, 196 U. S. 239, 251-252; *Hairston* v. *Danville and Western Railway Company*, 208 U. S. 598, 605.

Although the concept of "public use" has been the subject of interpretation by the courts of the several states, it is firmly established, without exception, that the statute, authorizing a taking for public use, must be framed in such a manner that the public use is unequivocal and absolute. The use by the public must be fixed and definite, and the general public must have a right to enjoy the land. *Boyd* v. *C. L. Ritter Lumber Company*, 119 Va. 348, 369-370. "Legislation which is designed or which is so framed that it may be utilized to accomplish the ultimate result of placing property in the hands of one individual avowedly for a public purpose is unconstitutional. It would enable that to be achieved by indirection which by plain statement would be impossible." *Salisbury Land & Improvement Company* v. *Commonwealth*, 215 Mass. 371, 377.

The amendment in Section 14.1 of the Public Building Commission Act authorizes condemnation of land, which may never be devoted to a public use. It expressly authorizes and empowers the Commission to "pledge or mortgage all or any of the property to be acquired with the proceeds

of the interim notes or provide otherwise for the sale, public or private and with or without notice, of all or any part of the property, in the event of default, etc."

Section 14.1 expressly requires that the interim notes shall be issued *in advance* of the sale of the bonds. The bond proceeds shall liquidate the interim indebtedness and free the condemned land from the security limitations, which are imposed by the private bankers and their investors. If the bonds are not sold by December 31, 1964, the interim notes will be defaulted and the condemned land, purportedly acquired for a public purpose, will fall into the hands of the bankers by virtue of a public or private sale without notice. In reality, Section 14.1 not only creates but expressly authorizes the possibility of a divestiture of title and the forced transfer thereof to private interests under the guise of the sovereign power of eminent domain. By operation of Section 14.1, the appellant has become an unwilling seller for a private use. It is not given the opportunity to negotiate the price of this valuable parcel of land in the financial and business district of Chicago.

In its decision,[28] the court below observes that the appellant "would have us assume that the bonds cannot, or will not be sold." The legislators were concerned that the bonds could not be sold and gave protection to lenders in the event the bonds could not be sold. It is clear that in their enactment of Section 14.1 they intended to endow the private lenders with every possible protection. What other rational explanation can justify the extraordinary legislative authorization to mortgage public property and to permit the forfeiture of this land to private lenders at public or private sale without notice? It cannot be denied that this legislative grant of power is singular and unique in the field of municipal law. Under a previously existing Illinois Statute, no real estate may be sold by virtue of a power of sale in any mortgage or trust deed, but must be

28. *Post*, p. 31.

foreclosed only by judicial proceedings. Yet, under the provisions of Section 14.1 the lenders are granted the exclusive and extraordinary privilege to sell the condemned property without judicial foreclosure proceedings. It is a special privilege which is enjoyed by no other person in the State of Illinois and, as a matter of fact, has been condemned by statute for many years.[29]

This legislative apprehension that the bonds may not be sold is not without merit. What degree of certainty can be ascribed to any future bond or security market? Many factors can affect it adversely. There may be a war or some international or national emergency, which would limit construction to defense purposes exclusively. Labor difficulties in major industries could create serious problems in the national economy. A depression or recession could cause widespread tax delinquencies in Cook County, Illinois, thereby damaging the credit rating of its public bodies.[30] These factors, none of which is controlled either by the appellee or the financial houses, can well prevent the sale of the bonds.

That the banks and the appellee Commission also share these apprehensions is shown by the fact they have provided ample protection for their interests. The bank credit agreement has provided every possible protection for the bankers and their investors, and every protective measure is authorized by Section 14.1. Even the Commission was concerned about the sale of revenue bonds. In the appellee's contract of March 2, 1961 with four architectural firms, it was expressly provided that a Federal grant in the amount of $1,500,000 would constitute the sole reimbursement to the architects if the appellee Commission, for any reason, is unable to issue and sell bonds and complete the project.

29. Chapter 94, Section 23, Illinois Revised Statutes, 1961.

30. See *Ashton* v. *County of Cook*, 384 Ill. 287. This case reflects some of the problems caused by tax delinquencies during the last depression.

The interests of the appellee, the bankers and the architects are adequately secured. The appellee's exercise of its powers under the Public Building Commission Act, as amended by Section 14.1, forces the appellant to assume all risks. The appellant must gamble that the bonds will be issued and sold, that the interim notes will not be defaulted and that the bankers will not acquire its land at a public or private sale without notice before the land is ever devoted to a public purpose. The irony of this is that the appellant alone enjoys the Federal constitutional guarantee that its land shall not be condemned, except for a public use.

The Commission, the bankers and the lenders take no risks. In the event of default, the lenders will acquire the condemned land which was ostensibly taken for a public use.

We submit that the Public Building Commission Act, as amended by Section 14.1, violates the due process clause of the Fourteenth Amendment. There is no assurance that the condemned land will ever be devoted to a public use.[30a] Since it has no taxing power, the appellee must rely upon the sale of its bonds to retire the interim indebtedness and free the land for public use. There is no certainty that the bonds will be sold. Nevertheless, the appellee and the bankers have securely protected themselves against this foreseeable contingency. The security interest of the lenders appears to be the paramount and dominant objective. Under the terms of this Act, the ultimate public use is purely conjectural and is contingent upon a future disposition of bonds, which, in turn, depends upon factors entirely outside the control of the Commission. To force such speculation upon any landowner is inconsistent with the due process clause of the Fourteenth Amendment.

30a. If municipalities or government agencies do not lease space in the building the Board of Commissioners can rent the building or buildings as they may determine to private parties. (Chap. 34 Sec. 3314 (i), Illinois Revised Statutes 1961 *Post*, p. 48.)

II.

Section 10 of the Eminent Domain Act of April 10, 1872, which governs condemnation proceedings authorized by the Public Building Commission Act, provides that the landowner shall recover his costs and expenses in the event the condemnor either abandons or dismisses its proceeding. As stated previously, the appellee has no taxing power. Since its creation in 1956 no bonds have been sold. No donation of funds has been received by the Commission. Interim financing is the only current source of its funds and Section 14.1 restricts the use of these funds exclusively to the *acquisition* of land. The Public Building Commission Act, as it is now amended by Section 14.1, provides no funds whatever for the payment of owner's costs and litigation expenses in the event the appellee dismisses or abandons its proceeding. These facts have never been denied by the appellee.

We do not contend that an owner is entitled to these costs and expenses as a matter of Federal law. We do submit, however, that the equal protection of the laws clause of the Fourteenth Amendment prevents the State from affording such statutory relief to some landowners and, as a matter of practical reality, withdrawing it from other similarly situated individuals. We contend that the appellant has a Federal right to be treated equally. *Barbier* v. *Connolly*, 113 U. S. 27, 31.

It is apparent that the Commission has no property, funds or financial resources. It is penniless. Under the law in its present form, it cannot acquire funds for these purposes. Section 14.1 of the challenged Act does not provide funds for these purposes. Any judgment against the appellee would be worthless. Relief contemplates not only the judgment but the payment thereof. Compare: *Eldred Drainage and Levee District* v. *Wilcoxson*, 365 Ill.

249, 253. Any State legislation, which limits the remedies of a selected group of landowners to a worthless judgment, can never amount to equal protection of the laws. Due to its fiscal deficiencies and omissions, Section 14.1 of the challenged Act operates to withdraw from the appellant the statutory protection and rights which are accorded by Section 10 of the Eminent Domain Act to every landowner, whose property is being taken by other solvent public bodies.

The procedural law of eminent domain in Illinois allows only one appealable order—the final award. All constitutional and legal questions regarding the validity of the enabling act, which are raised by a traverse or motion to dismiss, cannot be reviewed until the jury determines the damages and compensation and the entire proceeding is completed in the trial court. *Chicago Housing Authority* v. *Abrams*, 409 Ill. 226, 229-230. Consequently, this appellant is forced to incur an expense of a complete trial before it can obtain any final adjudication on the basic constitutional questions and the validity of the condemnation proceeding. This could amount to $100,000 or more. In addition, it faces the constant possibility that the appellee might be forced to dismiss or abandon the proceeding, a possibility which the appellee and architects and the bankers have foreseen and for which they have made security provisions. Under the present state of affairs. the appellant could never recover its statutory damages—a right secured to owners whose land is condemned by other public bodies.

In its decision [31] the court below observes that, in the event of the appellee's abandonment or dismissal, the appellant would not possess a worthless judgment for "we cannot believe that the legislatures of the State of Illinois; or the County of Cook, or the City of Chicago would fail

31. *Post*, p. 32.

the following year to appropriate for such a judgment." Such legislative action would be legally invalid in the State of Illinois. Section 20 of Article IV of the Constitution of 1870 expressly provides that "the State shall never pay, assume or become responsible for the debts or liabilities of, or in any manner give, loan or extend its credit to or in aid of any public or other corporation, association or individual." Under Illinois law, appropriations of public moneys can be made only for public and not for private benefit. *People* v. *The Illinois Toll Highway Commission*, 3 Ill. 2d 218, 230. Neither the County of Cook nor the City of Chicago could undertake to satisfy any judgment against the appellee by virtue of the provisions of Section 9, Article IX of the Illinois Constitution of 1870. These constitutional provisions limit a municipality's power of taxation *to its own corporate purposes.* The Supreme Court of Illinois holds that the legislature cannot confer upon a municipality the power to issue bonds for an illegal purpose or for the purpose of paying a debt not incurred by the exercise of some authorized corporate function or purpose. A tax imposed for the payment of a debt not incurred by the authority imposing the tax, and for the payment of which it is in nowise responsible, has been held to be not for a corporate purpose, regardless of the morality of the obligation. *Sleight* v. *People*, 74 Ill. 47, 49-50; *Berman* v. *Board of Education*, 360 Ill. 535, 547. In *Berman*, the Supreme Court of Illinois held invalid statutes, authorizing a local board of education to issue bonds to pay defaulted tax anticipation warrants issued in excess of tax receipts, even though the board had received the proceeds of the sale of the warrants and admittedly had a moral obligation to repay them.

The appellee is a municipal corporation, separate and distinct from the State of Illinois, County of Cook and City of Chicago. By virtue of the aforementioned con-

stitutional prohibitions, none of the latter bodies could appropriate monies to discharge the appellee's obligations.

III.

The Three-Judge Court erred in the following respects:

1. The court below dismissed this proceeding through an erroneous application of the provisions of 28 U.S.C. 1447(d).[32] It construed this proceeding as a collateral attack upon a previous order of remand. Under this statute, an order of remand, entered in a removal proceeding, is not reviewable. These provisions are not applicable in any manner whatsoever to the present proceeding.

The record in this proceeding, and particularly the Commission's own exhibit, demonstrate that the prior removal proceedings before Judge Hoffman were prosecuted *solely* on the ground of *diversity of citizenship.*[33] The entire proceeding before Judge Hoffman was directed to that single issue. No federal questions, which form the jurisdictional basis for the present proceeding were ever presented to Judge Hoffman and, hence, could never have been adjudicated by him in his remandment order of November 17, 1961. Consequently, this proceeding, by no stretch of the imagination, can ever be construed as a collateral review of Judge Hoffman's order of remand. This Court has held that, by an order of remand, each party loses the right to litigate the case in the federal courts on removal "but both retain such rights as they may have to continue the litigation in the state *or to bring an independent suit in the federal courts.*" *United States* v. *Rice*, 327 U.S. 742, 747 (Emphasis added). This principle is certainly applicable to a situation where, as in the present proceeding, an independent action is prosecuted

32. *Post*, p. 29.

33. R. 127.

in the federal district court, subsequent to an unsuccessful removal proceeding, on the jurisdictional ground of federal question, which was neither advanced nor adjudicated on the removal proceeding.

2. The court below[34] observed that the issues present in this proceeding are now presently before the Circuit Court of Cook County. This fact would not oust the federal court of its jurisdiction and could not justify a dismissal for want of jurisdiction. *Huntington* v. *Laidley*, 176 U. S. 668, 678-679. Moreover, the fact that, under Illinois procedure, the appellant is forced to the trial of the entire case before it can obtain a review of its preliminary constitutional questions places it in a very unfavorable position. It would be forced to expend a substantial sum of money on the trial of the question of compensation before it can present its constitutional issue to the highest court of the State and, in the event of an adverse ruling, continue to this Court by appropriate method of review. If its contentions were finally upheld, its expenditures of large sums of money for expert witnesses for the trial of the compensation question would be in vain. These are moneys which it could never recoup.

3. The appellant can find no comfort in a taxpayer's suit in the Illinois courts, as is suggested by the court below.[35] The short answer to this observation is the fact that a taxpayer's suit will not lie in this particular situation. The Public Building Commission has no power to tax; consequently, no tax funds are presently involved. Under Illinois law, the right of a taxpayer to sue rests upon a misappropriation of public *tax* funds and the public must have a right in the funds to be misappropriated. This right is founded upon the proposition of its equitable ownership of such funds. *Price* v. *City of Mattoon*, 364

34. *Post*, p. 28.
35. *Post*, p. 29.

Ill. 512, 514. At the present stage of this proceeding, no tax funds are being expended. The secured investments of private bankers are intended to finance the acquisition of land. The taking of the appellant's land for what may well not be a public purpose, however, is involved. The appellant, as owner, has a right to challenge that taking in this proceeding.

4. The Supreme Court of Illinois upheld the constitutionality of the Public Building Commission Act as it was written in 1957. *People* v. *Public Building Commission*, 11 Ill. 2d 125. The challenged Act, as amended by Section 14.1 did not come into being until August 4, 1961. The Supreme Court of Illinois has never considered this amendment.

5. It is submitted that the questions presented by this appeal are substantial and that they are of public and national importance. Whether State legislative bodies, as in the case at bar, can authorize its municipal bodies to exercise powers of eminent domain in such a manner so as to thrust upon landowners hazards and risks to such a degree that the landowner's constitutional rights are actually violated is a matter of federal concern. This is especially true when the State legislation empowers the public body and those dealing with it to secure themselves against these risks and leaves no protection for the landowner, who, as a matter of law, is the sole beneficiary of the constitutional guarantee.

Respectfully submitted,

LOUIS M. MANTYNBAND,
SIDNEY R. ZATZ,
IRWIN I. ZATZ,
EDWARD J. HLADIS,
One North La Salle Street,
Chicago 2, Illinois,
Attorneys for Appellant.

ARVEY, HODES & MANTYNBAND,
Of Counsel.

APPENDIX A.

UNITED STATES DISTRICT COURT

Northern District of Illinois,

Eastern Division.

PEERLESS WEIGHING AND VENDING MACHINE CORPORATION, a corporation, *Plaintiff*,

vs.

PUBLIC BUILDING COMMISSION OF CHICAGO, a Municipal corporation, *Defendant*.

No. 62 C 144

MEMORANDUM AND ORDER.

HASTINGS, *Chief Judge, Circuit Judge*; CAMPBELL, *Chief Judge and* LABUY, *Judge, District Judges.*

CAMPBELL, *Chief Judge*

This is an action heard before the above three-judge court convened pursuant to Title 28, U. S. C. Sections 2281 and 2284. Plaintiff's complaint requests a temporary restraining order and a permanent injunction enjoining the enforcement of Section 14.1 of the Illinois Public Building Commission Act (Laws of Illinois, 1961, page 2770, Chapter 34, Section 3314.1, Illinois Revised Statutes, 1961), and an order enjoining the Public Building Commission of Chicago and its agents, employees and representatives from

proceeding with an eminent domain action now pending in the Circuit Court of Cook County, Illinois. In general plaintiff's complaint alleges Section 14.1 is unconstitutional in that it denies the plaintiff equal protection of the laws and due process of law in contravention of the 14th Amendment to the Constitution of the United States. Defendant has filed a special appearance moving the complaint be stricken and the action dismissed and that the temporary restraining order be denied.

A brief history of the facts shows that on September 12, 1961, the defendant, the Public Building Commission of Chicago (hereinafter referred to as "Commission"), a municipal corporation created by the City of Chicago in accordance with the aforesaid Public Building Commission Act of the State of Illinois, filed a petition in the Circuit Court of Cook County to condemn a certain parcel of real estate owned by Pearless Weighing & Vending Machine Corporation, (hereinafter referred to as "Peerless"). The property is located in the central business district of the City of Chicago commonly known as the "Loop Area". This real estate consists of an area approximately 54,560 square feet constituting a city block bounded by Court Place on the north, Dearborn Street on the east, Washington Street on the south and Clark Street on the west, with the exception of an area of approximately 4,000 square feet at the northwest corner of Dearborn and Washington Streets. This property is improved with a commercial parking lot and other buildings which are leased to various business enterprises.

Subsequent to the filing of the eminent domain petition in the Circuit Court of Cook County, Peerless, the plaintiff herein, had the cause removed to this court where it was docketed as Civil Case No. 61 C 1681, and referred to Judge Julius J. Hoffman. After hearing, and by order entered November 17, 1961, Judge Hoffman granted the

Commission's motion and remanded said eminent domain proceeding to the Circuit Court of Cook County.

Peerless then appeared in the State Court action and filed a jury demand, a traverse and a motion to dismiss. It is noted that said traverse alleges substantially the same constitutional defects set forth in the complaint before us. Subsequently, on January 11, 1962, Peerless filed in this Court the complaint now under consideration.

The applicable statutes so far as herein material provide as follows:

Title 28 § 1447 (d), * * *

> An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise. As amended May 24, 1949, c. 139, § 34, 63 Stat. 102.

Title 28 § 2283.

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

Eminent Domain Act.; Illinois Revised Statutes (1961) Chapter 47 Sections 2.8, 2.9 and 10 (a).

> § 2.8. After the petitioner has taken possession of the property pursuant to the order of taking, the petitioner shall have no right to dismiss the petition, or to abandon the proceeding, as to all or any part of the property so taken, except upon the consent of all parties to the proceeding whose interests would be affected by such dismissal or abandonment. Added by act approved July 11, 1957. L. 1957, p. 2603.
>
> § 2.9 If, on an appeal taken under the provisions of Section 2.2 of this Act, the petitioner shall be determined not to have the authority to maintain the proceeding as to any property, which is the subject

thereof, or if, with the consent of all parties to the proceeding whose interests shall be affected, the petitioner dismisses the petition or abandons the proceedings as to any such property, the trial court then shall enter an order revesting the title to such property in the parties entitled thereto, if the order of taking vested title in the petitioner; requiring the petitioner to deliver possession of such property to the parties entitled to the possession thereof; and making such provision as shall be just, for the payment of damages arising out of the petitioner's taking and use of such property, and also for costs, expenses, and attorney fees as provided in Section 10 of this Act; and the court may order the clerk of the court to pay such sums to the parties entitled thereto, out of the money deposited by the petitioner in accordance with the provisions of Section 2.3 (a) of this Act. Added by act approved July 11, 1957, L. 1957, p. 2603.

§ 10 (a) If the petitioner is not in possession pursuant to an order entered under the provisions of Section 2.3 of this Act the judge or court, upon such report, or upon the court's ascertainment and finding of the just compensation where there was no jury, shall proceed to adjudge and make such order as to right and justice shall pertain, ordering that petitioner enter upon such property and the use of the same upon payment of full compensation as ascertained as aforesaid, within a reasonable time to be fined by the court, and such order, with evidence of such payment, shall constitute complete justification of the taking of such property. Provided, that if in such case the petitioner shall dismiss said petition before the entry of such order, or shall fail to make payment of full compensation within the time named in such order, that then such court or judge shall, upon application of the defendants to said petition or either of them, make such order in such cause for the payment by the petitioner of all costs, expenses and reasonable attorney fees of such defendant or defendants paid or incurred by such defendant or defendants in defense

of said petition, as upon the hearing of such application shall be right and just, and also for the payment of the taxable costs.

* * * * * *

Public Building Commission Act: Illinois Revised Statutes (1961) Chapter 34, Section 3314.1.

"*Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

"Section 1. Section 14-1 is added to 'An Act to authorize the creation of Public Building Commissions and to define their rights, powers and duties', approved July 5, 1955, as amended, the added Section to read as follows:

"§ 14.1. In addition to the permanent financing authorized by Sections 14 and 15 of this Act, the Board of Commissioners of any public building commission may borrow money and issue interim notes in evidence thereof, in the manner following:

"(a) Whenever any area or site has been selected, located, designated and approved, as provided by Section 14 of this Act, and it is deemed advisable and in the interests of the Commission to borrow funds temporarily for the acquisition of the area or site in advance of permanent financing, the Board of Commissioners may from time to time and pursuant to appropriate resolution, issue interim notes to evidence borrowings for the purpose of obtaining funds with which to acquire the area or site selected and approved for the erection, alteration or improvement of a building or buildings to be located thereon for the purposes provided for by this Act, including funds for payment of interest on such borrowings and funds for all necessary and incidental expenses in connection with said area or site until the date of the permanent financing. Any resolution authorizing the issuance of said notes shall describe the area or site to be acquired and shall specify the principal amount, rate of interest (not exceeding six per cent per annum) and maturity

date which shall be the same for all interim notes but not to exceed five years from date of issue of the first of said notes so issued, and such other terms as may be specified in said resolution; provided, however, that time of payment of any such notes may be extended for a period of not exceeding two years from the maturity date thereof.

"The Board of Commissioners may provide for the registration of the notes in the name of the owner either as to principal alone, or as to both principal and interest, on such terms and conditions as the Board may determine by the resolution authorizing their issue. The notes shall be issued from time to time by the Board of Commissioners as funds are borrowed, in the manner the Board of Commissioners may determine. Interest on the notes may be made payable semiannually, annually or at maturity. The notes may be made redeemable, prior to maturity, at the option of the Commission, in the manner and upon the terms fixed by the resolution authorizing their issuance. The notes may be executed in the name of the Commission by the Chairman of the Board of Commissioners or by any other officer or officers of the Commission as the Board by resolution may direct, shall be attested by the Secretary or such other officer or officers of the Commission as the Board may by resolution direct, and be sealed with the Commission's corporate seal. All said notes and the interest thereon may be secured by a pledge of any income and revenue derived by the Commission from the property to be acquired with the proceeds of the notes, after deducting from such income and revenue any reasonable and necessary maintenance and operation expenses, and shall be payable solely from said income and revenue and from the proceeds to be derived from the sale of any revenue bonds for permanent financing authorized to be issued under Sections 14 and 15 of this Act, and from the property acquired with the proceeds of the notes.

"Contemporaneously with the issue, as provided by this Act, of revenue bonds all interim notes, even

though they may not then have matured, shall be paid, both principal and interest to date of payment, from the funds derived from the sale of revenue bonds for the permanent financing and such interim notes shall be surrendered and canceled.

"(b) The Commission, in order further to secure the payment of the interim notes, is, in addition to the foregoing, authorized and empowered to do the following:

"1. Pledge or mortgage all or any part of the property to be acquired with the proceeds of the interim notes, or provide otherwise for the sale, public or private and with or without notice, of all or any part of the property, in the event of default in payment of principal of or interest on the interim notes or on any covenant or agreement of the Commission in connection with the interim notes, and in the event of any such default to permit the acceleration of the maturity of the interim notes. Except with respect to the funds derived from revenue bonds, as hereinabove provided, no pledge, mortgage or provision for the sale of any property shall relate to any property, other than the property to be acquired with the proceeds of any and all said interim notes, and any net income and revenue derived from the property.

"2. Covenant against pledging or mortgaging or otherwise disposing of all or any part of or interest in the property to be acquired with proceeds of the interim notes, or any net income derived from the property; and against permitting or suffering any lien on the property or said net income; and against any borrowings or incurring liabilities in addition to the borrowings and liabilities, evidenced by the interim notes, prior to the issuance of revenue bonds; and against the issue of interim notes in excess of a specified principal amount; and against preference of any interim note over any other interim note as to payment of interest or principal; and against making any substitutions for or additions or improvements to said property except with the proceeds derived from

borrowings evidenced by any and all said interim notes, or with the net income derived from said property.

"3. Make any other or additional covenants, terms and conditions not inconsistent with the provisions of sub-paragraph (a) of this Section, and do any and all acts and things as may be necessary or convenient or desirable in order to secure payment of its interim notes, or, in the discretion of the Commission, as will tend to make the interim notes more acceptable to lenders, notwithstanding that the covenants, acts or things may not be enumerated herein; provided, however, that nothing contained in this subparagraph shall authorize the Commission to secure the payment of the interim notes out of property other than the property acquired with the proceeds of the interim notes, and any net income and revenue derived from the property and the proceeds of revenue bonds as hereinabove provided.

"(c) The interim notes shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

"(d) No member, officer, agent or employee of the Commission nor any other person who executes interim notes, shall be liable personally thereon by reason of the issuance thereof."

The pleadings clearly show that all of the issues presently before us are now pending before the Circuit Court of Cook County, the plaintiff herein having properly placed them in issue by way of his traverse. The State Court has taken general plenary jurisdiction of this matter and all of the issues relating thereto. There is nothing to indicate that all of the issues, including those of a constitutional nature, cannot be properly and adequately determined in the State Court. Moreover, plaintiff's claim is based wholly upon rights asserted under the Eminent Domain Statute of Illinois and involves no rights arising under the constitution or laws of the United States. Thus, even

without resort to the principles of comity we lack jurisdiction. In addition, the Illinois State Courts afford a plain, speedy and efficient procedure by which Peerless might have an expeditious hearing on all questions herein asserted. The Act complained of having authorized a bond issue, Peerless can immediately petition for leave to file a taxpayer's suit. If this petition is granted the petition will go directly and expeditiously to the Illinois Supreme Court, and from there possibly to the United States Supreme Court by way of Certiorari.

Further, Section 1447 (d) of the Judicial Code (Title 28 U. S. C.) is unequivocal in stating that once a case is removed and subsequent thereto is remanded, the order remanding is not reviewable. The acknowledged legislative intent in passing this statute was to avoid the delay of a case by the repeated and prolonged federal litigation of jurisdictional questions. See *U. S.* v. *Rice*, 327 U. S. 742. The facts before us indicate the plaintiff previously once removed this case from the State Court. Pursuant to said removal Judge Hoffman held a hearing to determine plaintiff's alleged claim of federal jurisdiction. Judge Hoffman made a finding that plaintiff's pleadings failed to sustain federal jurisdiction. In keeping with the intent of Section 1447 (d), we cannot now reconsider the issue of jurisdiction, plaintiff having once been accorded the right to allege said jurisdiction. Accordingly, and completely dispositive of this case, the motion of defendant for judgment of dismissal as to the complaint is granted, and the same hereby is dismissed for lack of jurisdiction.

Requisite to making the above finding of lack of jurisdiction it was necessary to exhaustively review the pleadings and to give thorough consideration to the noteworthy oral presentations tendered by respective counsel. In consequence of our research we here comment briefly on the merits of the case.

The only point seriously urged by plaintiff in its argument ond complaint is that Sections 14 and 15 of the Public Building Commission Act of the State of Illinois are unconstitutional. In support of this allegation he asserts; that there is a possibility the property acquired by the Commission may never be utilized for a "public purpose", and, that the Act fails to provide for a fund out of which the Commission could pay for a condemnation judgment in its favor or, proper costs and attorney fees should the Commission subsequently elect to dismiss its petition.

We have noted that the Illinois Supreme Court considered and declared constitutional the Public Building Commission Act in *People* v. *Public Building Commission*, 11. Ill. 2d 125 (1957).

The first of the fiscal provisions of the Act provides for the issuance of inferim promissory notes to private investors. This loan agreement has in fact been entered into with six Chicago banks calling for the banks to loan to the Commission funds to be used solely for interest payments and the acquisition of the Civic Center Site, and all necessary and incidental expenses relating thereto. The interim notes are payable from income and revenue derived by the Commission from property to be acquired with the proceeds of the notes. To secure payment of the notes the Commission pledges to the banks said income and revenue derived from such property. Upon the request of the holders of at least 66⅔% of the principal amount of outstanding notes, the Commission has agreed to pledge or mortgage to the banks all or any part of the property. It is plaintiff's contention that the possibility of a mortgage existing in the hands of private parties creates the further possibility that the property may not be used for a "public purpose". In asserting this contention plaintiff fails to place much reliance on the second of the fiscal provisions. That provision provides for the Commission

to sell revenue bonds to pay-off the interim notes. Peerless would have us assume that these bonds cannot, or will not be sold. A State by the grant of such power as we have here impliedly consents to regulate and supervise the exercise of such a power. As to the choice of means selected to finance eminent domain legislation, this decision is within the sole discretion of the State. Were we to substitute our judgment for that of the State Legislature we would be conducting an unwarranted incursion into the administrative and legislative domains. There being no denial of Constitutional rights in the financing provisions of the Act, we must refrain from acting thereon.

Nor can we share plaintiff's great worry that the Commission is not and will not be financially able to pay the condemnation judgment, or costs and attorney fees should the petition in the State Court be dismissed. As to the payment of the condemnation judgment, the law of eminent domain is clear in holding that title to property cannot be taken in condemnation proceedings until compensation is paid. Should the title have passed and the required judgment payment not be made, then the landowner has the right to have both the title revested and damages awarded for the trespassatory taking. Thus, this contention is on its face without merit.

Relating to the possible dismissal by the Commission of its petition in the State Court, it is true that Section 10 of the Illinois Eminent Domain Act does provide in such event for the payment of costs and attorney fees to the landowner. But, this protection is merely a matter afforded by some states, such as Illinois. This right is not guaranteed by the United States Constitution. Moreover, we cannot help but believe that if those unusual circumstances should occur whereby the Commission did in fact dismiss its petition, and at the same time was without funds, the plaintiff would then be the possessor of a worth-

less judgment. For, if the Circuit Court of Cook County were to award plaintiff a valid judgment for costs and attorney fees we cannot believe that the legislatures of the State of Illinois, or the County of Cook, or the City of Chicago would fail the following year to appropriate for such a judgment. It is noted that none of the above have failed to appropriate for the payment of all judgments in the past.

Therefore, even if jurisdiction were found we would be required to dismiss the complaint for failure to state a cause of action upon which relief could be granted.

Cause dismissed at plaintiffs costs.

ENTER

.....

.....

.....

February 14, 1962.

APPENDIX B.

(Hand written in margin. Originated in the Senate Edward H. Alexander, Secretary of the Senate.)

An Act to authorize the creation of Public Building Commissions and to define their rights, powers and duties.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. This Act shall be known and may be cited as the Public Building Commission Act.

Sec. 2. It is hereby found and declared that there exist in many county seats within this State inadequate and outmoded public buildings and facilities in use in the conduct of local government by the various branches, departments and agencies thereof; that in many cases, by reason of the age of such public buildings and the increased activities on the part of both the citizen and his local government, they are no longer adapted or adequate to meet the needs of the growing population; that as a consequence thereof there are many counties, cities, and other branches and agencies of government within this State which are compelled to spend large sums of money annually in the rental, operation and maintenance of additional building space to house the various branches, departments and agencies of government to meet this ever-increasing need; that as a result thereof, in many of the cities, counties, and other municipalities within this State, the public buildings housing the various branches, departments, and agencies of government are widely scattered and dispersed throughout the locality, thereby creating confusion and considerable waste of time and effort on the part of citi-

zens conducting ordinary business with the various branches and agencies of government, and thereby creating reduced efficiency of operation in the necessary intergovernmental activities of the various branches and agencies of government; that many public records, wills, conveyances, vital statistics, court decrees, and other similar documents in use in the conduct of daily business, are now filed in many poorly protected and overcrowded spaces and at widely separated locations by reason of the lack of an adequate public building or buildings; that these conditions impair the efficient, economical and indispensable governmental functions of the various branches and agencies of government and that, in order to eradicate these conditions, it is hereby found and declared to be necessary and desirable to make possible the construction, acquisition, or enlargement of buildings to be made available for use by governmental agencies with the intent and purpose of centralizing, insofar as is practicable, the activities of the different branches of government; and that the eradication of these conditions and the construction, acquisition or enlargement of such public building or buildings, in the manner hereinafter provided in this Act, is hereby declared to be a public use essential to the public interest.

Sec. 3. The following terms, wherever used, or referred to in this Act, shall have the following respective meanings, unless in any case a different meaning clearly appears from the context;

(a) "Commission" means a Public Building Commission created pursuant to this Act.

(b) "Commissioner" or "Commissioners" shall mean a Commissioner or Commissioners of a Public Building Commission.

(c) "County seat" means a city, village or town which is the county seat of a county.

(d) "Municipal corporation" includes a county, city, village, town, (including a county seat), park district, school district, board of education, sanitary district, and any other municipal body or governmental agency of the State.

(e) "Governing body" shall include a city council, county board, or any other body or board, by whatever name it may be known, charged with the governing of a municipal corporation.

(f) "Presiding officer" shall include the mayor or president of a city, village or town, the presiding officer of a county board, or the presiding officer of any other board or commission, as the case may be.

(g) "Oath" shall mean oath or affirmation.

Sec. 4. The governing body of any county seat or the county board of any county may, by resolution adopted by a majority of its members, determine that there is need and that it is in the best interest of the public that a Public Building Commission be organized to exercise the powers and authority prescribed by this Act and it shall therein set forth the name of the Public Building Commission to be created hereunder, provided, however, that the words "Public Building Commission" shall form part of its name. The presiding officer of the county seat or county board adopting the resolution shall, within 10 days after the date of adoption, cause a copy of the resolution to be published once in a daily newspaper published in the county seat and if there be no newspaper published in that county seat, then in a newspaper published in the county having a circulation in that county seat. Any municipal corporation which has the power of taxation under the laws of this State and any part of whose area of jurisdiction lies within the territorial limits of that county seat may join in the organization of the Public Building Commission in the manner hereinafter set forth

in this section. The governing body of any municipal corporation meeting the foregoing requirement and desiring to join in the organization of the Public Building Commission, shall, by a majority vote of its members and within 45 days from the date of such publication, adopt a resolution to that effect. The presiding officer of each municipal corporation adopting such a resolution signifying its desire to join in the organization of the Public Building Commission, shall, within 15 days after the date of adoption thereof, transmit a copy of the resolution duly certified by the proper officer of that municipal corporation to be true and correct, to the presiding officer of the county seat or county board adopting the original resolution.

Within the 10 day period following the expiration of 60 days after the date of publication of the original resolution, it shall be the duty of the presiding officer of the county seat or county board adopting the original resolution to file in the office of the Recorder of Deeds in and for that county under one cover a certified copy of the resolution adopted by such county seat or county board together with a certificate by the publisher of the newspaper of the publication of said resolution and the date of publication and all of the certified copies transmitted to him as hereinabove provided by the municipal corporation, if any, joining in the organization of the Public Building Commission.

Upon such filing in the office of the Recorder of Deeds the Public Building Commission shall be deemed to be organized as a municipal corporation and body politic.

There shall not be more than 1 Public Building Commission in any county. (Amended by act approved May 16, 1957.)

Sec. 5. Within 30 days after the filing in the office of the Recorder of Deeds of the resolution or resolutions organizing the Public Building Commission, the presiding officer

of the county seat or county board adopting the original resolution and the presiding officers of the municipal corporations, if any, joining in the organization of the Public Building Commission shall appoint Commissioners in the manner hereinafter provided. All appointments shall be made with the advice and consent of the governing body of the municipal corporation whose presiding officer makes the appointment.

Within 10 days after the appointment of the commissioners by the respective presiding officers, with the advice and consent of the respective governing bodies, as aforesaid, each of such presiding officers shall transmit to the presiding officer of the county seat or county board which adopted the original resolution, a certificate of such appointment. The presiding officer of the county seat or county board shall cause all such certificates of appointment, including a certificate of the appointments made by the presiding officer of the county seat or county board which adopted the original resolution, to be bound under one cover and filed in the office of the Recorder of Deeds in and for said county. Upon such filing, the persons so appointed shall constitute the Board of Commissioners of the Public Building Commission and upon taking the oath of office as hereinafter provided shall be deemed to have qualified and be empowered to exercise the powers and authority prescribed in this Act.

The Board of Commissioners shall in all cases consist of not less than 5 members and in such instances as there may be more than 5 members as herein provided, the Board of Commissioners shall consist of an odd number.

If the county seat alone organizes the Public Building Commission, the presiding officer of the county seat shall appoint 5 Commissioners.

If the county board alone organizes the Public Building

Commission, the presiding officer of the county board shall appoint 5 Commissioners.

If any one municipal corporation shall join with the county seat or county board in the organization of the Public Building Commission then and in such event the presiding officer of the county seat or county board adopting the original resolution shall appoint 3 Commissioners and the presiding officer of the municipal corporation joining in the organization of the Public Building Commission shall appoint 2 Commissioners.

If two or more municipal corporations, in addition to the county seat or county board adopting the original resolution, shall join with the county seat or county board in the organization of the Public Building Commission then and in such event the presiding officers of the municipal corporations joining in the organization shall each appoint 1 Commissioner and the presiding officer of the county seat or county board adopting the original resolution shall appoint such number of commissioners as shall exceed by one the aggregate number appointed by the presiding officers of the municipal corporations joining in the organization of the Commission.

The initial terms of such Commissioners shall be for 5, 4, 3, 2 and 1 year, respectively, and in such cases as there may be more than 5 Commissioners the initial terms of Commissioners in excess of 5 Commissioners shall be on a descending scale of 5, 4, 3, 2 and 1 years, as there are Commissioners in excess of 5. The length of the terms of the first Commissioners shall be determined by lot at their first meeting. The initial terms of office of Commissioners who are to hold office for terms of 1, 2, 3, 4 and 5 years, respectively, shall continue until that September 30th which next follows the expiration of the periods of 1, 2, 3, 4 and 5 years, respectively, from the date of the filing of the cer-

tificates of appointment in the office of the Recorder of Deeds, as aforesaid, and until their successors are appointed and qualify by taking their oath of office.

At the expiration of the term of each of the Commissioners, and of each succeeding Commissioner, or in the event of a vacancy, resignation, removal or refusal to act, the presiding officer of the municipal corporation, who made that Commissioner's appointment in the first instance, shall appoint a Commissioner, in the manner hereinabove provided, to hold office, in the case of a vacancy occurring for whatever reason, for the unexpired term, or in the case of expiration, for a term of 5 years, and until his successor is appointed and has qualified. Each such appointment shall become effective upon the filing by the presiding officer making the appointment of a certificate of the appointment in the office of the Recorder of Deeds for that county. Any Commissioner may be appointed to succeed himself. (Amended by act approved May 16, 1957.)

Sec. 6. Each person appointed as a member of the Board of Commissioners shall qualify by taking and subscribing to an oath to uphold the Constitution of the United States and of the State of Illinois and to well and faithfully discharge his duties, which oath shall be filed with the Secretary of the Commission.

Commissioners shall be persons experienced in real estate management, building construction or finance. The fact that a person is an officer or employee of any municipal corporation, including the county seat, or county board or any other municipal corporation which joined in the organization of the Commission, shall not disqualify that person from being a Commissioner of a Public Building Commission. No person who is appointed as a Commissioner of a Public Building Commission shall have a finan-

cial interest in the creation of or in the continued existence of the Public Building Commission. No Commissioner shall acquire any interest, direct or indirect, in any contract or proposed contract of the Public Building Commission, or in any land, building or buildings, or other property or facilities in which the Public Building Commission has an interest. If any Commissioner at any time holds or controls an interest, direct or indirect, in any property which the Public Building Commission is about to acquire, he shall disclose the same in writing to the Commission and such disclosure shall be entered upon the minutes of the Board of Commissioners. (Amended by act approved May 16, 1957.)

Sec. 7. No Commissioner shall receive any compensation, whether in form of salary, per diem allowance or otherwise, for or in connection with his services as such Commissioner. Each Commissioner, however, shall be entitled to reimbursement for any necessary expenditures in connection with the performance of his duties.

Sec. 8. The Commissioners appointed in pursuance of the foregoing provisions of this Act shall constitute the Board of Commissioners of the Public Building Commission. The government, control and management of the affairs of the Public Building Commission shall be vested in the Board of Commissioners and such Board shall possess and exercise all of the powers granted under this Act and such other powers, not inconsistent with this Act, as may be necessary to effectuate the purposes of this Act.

The presiding officer of the county seat or county board adopting the original organization resolution shall call the first meeting of the Board of Commissioners. He shall give notice in writing to each member of the Board of the time and place of the meeting not less than 5 days prior to the meeting and shall preside over the meeting until the mem-

bers have elected a Chairman. The members, at the initial meeting, shall first draw lots to determine their terms of office which shall be entered of record in the proceedings of the Board.

The Board of Commissioners at the initial meeting shall elect one of their members as chairman. At such meeting or at a later meeting, the Board shall elect or appoint a secretary and treasurer and such other officers as they may deem necessary for such terms as they may decide upon. The secretary and treasurer need not be commissioners, and if such officers are not commissioners, they shall receive compensation in such amount as shall be determined by the Board. At such meeting, or at a later meeting, the Commissioners shall adopt a corporate seal, by-laws, and rules and regulations suitable to the purposes of this Act, which shall provide a time for the election of officers and of other regular and special meetings of the Commissioners, and shall contain the rules for the transaction of other business of such Public Building Commission and for amending such by-laws, rules and regulations.

Said Board of Commissioners shall have full power to pass all necessary ordinances, resolutions, rules and regulations for the proper management and conduct of the business of said Board of Commissioners and of said Public Building Commission and for carrying into effect the object for which such Public Building Commission is created. (Amended by act approved May 16, 1957.)

Sec. 9. A majority of the Board of Commissioners shall constitute a quorum for the transaction of the business thereof. The concurring vote of a majority of all the Commissioners shall be required for the exercise of any of the powers granted by this Act. All records of the Commission shall be open to public inspection at all reasonable hours.

Sec. 10. A Public Building Commission shall provide for the proper safekeeping of its records, subject to the provisions of "The Local Records Act", enacted by the Seventy-second General Assembly, and shall keep a minute book for the recording of the corporate action of the Board of Commissioners. A complete record of the meetings and proceedings of the Board of Commissioners shall be kept in such minute book and such minutes shall be signed by the Secretary of the Public Building Commission. The Commission shall keep a true and accurate account of its receipts and disbursements and an annual audit shall be made of its books, records and accounts. All officers and employees authorized to receive or retain the custody of money or to sign vouchers, checks, warrants, or evidences of indebtedness on behalf of the Commission, shall furnish surety bond for the faithful performance of their duties and the faithful accounting of all monies that may come into their hands, in an amount to be fixed and in a form to be approved by the Board of Commissioners. (Amended by act approved August 18, 1961.)

Sec. 11. The Treasurer of a Public Building Commission shall be the legal custodian of all funds derived from the issuance of bonds provided for under this Act and of all revenues derived from the operation of any project under this Act and of all other revenues from whatever source received. The Treasurer shall keep all funds and monies belonging to the Public Building Commission in such places of deposit as may be designated by resolution of the Board of Commissioners, provided, however, that only a regularly organized State or National Bank may be designated as a depository. When a bank has been designated as a depository it shall continue as such depository until ten (10) days have elapsed after a new depository is designated and has qualified by furnishing the statements of resources and liabilities as required by this section. When a new depository

is designated, the Board of Commissioners shall notify the surety of the Treasurer of that fact, in writing, at least five (5) days before the transfer of funds. The Treasurer shall be discharged from responsibility for all funds or money which he deposits in a designated bank while the funds and money are so deposited, provided the Treasurer shall not be discharged from responsibility for any funds or money deposited in a bank if the amount of such deposits exceed seventy-five per cent (75%) of the capital stock and surplus of the bank.

No bank shall be qualified to be designated a depository for monies of a Public Building Commission until it has furnished the Public Building Commission with copies of the last two sworn statements of resources and liabilities which the bank is required to furnish to the auditor of public accounts of this State or to the comptroller of currency. Each bank designated as a depository for such monies, while acting as such depository, shall furnish the Board of Commissioners of the Public Building Commission with a copy of all statements of resources and liabilities which it is required to furnish to said auditor of public accounts or to the comptroller of currency.

Sec. 12. The Board of Commissioners may employ such technical, professional, and clerical assistants as are necessary and expedient for the proper performance of its duties and for the accomplishment of the objects and purposes of the Commission. The salaries, fees, or other compensation of any such employee shall be fixed and determined by the Board of Commissioners.

For the purpose of aiding and cooperating with a Public Building Commission, the municipal corporations participating in its organization may assign or loan any of their employees, whether under Civil Service or not, to the Public Building Commission to aid in the performance of any

of the work of the Public Building Commission, and may provide necessary office space, equipment or other facilities for the Public Building Commission.

Any such employees so assigned or loaned who are members or beneficiaries of any existing pension or retirement system or who have been appointed to positions in the service of such participating municipal corporations under rules and classifications of any Civil Service Commission shall have the same status with respect thereto after assignment to the Public Building Commission.

To facilitate the Public Building Commission in aid of any project undertaken by it any municipal corporation joining in its organization may make available to the Public Building Commission the services of its engineering staff and facilities.

Sec. 13. This Act being designed to effect a public use and purpose, the corporate authorities of the municipal corporation or corporations creating the Public Building Commission and the corporate authorities of any other municipal corporations which may be desirous of renting space in any building or buildings to be acquired or constructed by such Public Building Commission, may make donations of property, real or personal, or cash grants to the Public Building Commission in such amount or amounts as they may deem proper and appropriate in aiding the Public Building Commission to effectuate the purpose for its creation.

Sec. 14. A Public Building Commission shall be a municipal corporation and shall constitute a body both corporate and politic separate and apart from any other municipal corporation, or any other public or governmental agency. It may sue and be sued, plead and be impleaded, and have a seal and alter the same at pleasure, have perpetual succession, make and execute contracts, leases, deeds

and other instruments necessary or convenient to the exercise of its powers, and make and from time to time amend and repeal its by-laws, rules and regulations not inconsistent with this Act. In addition, it shall have and exercise the following public and essential governmental powers and functions and all other powers incidental or necessary, to carry out and effectuate such express powers:

(a) To select, locate and designate one or more areas lying wholly within the territorial limits of the county seat of the county in which the Commission is organized as the site or sites to be acquired for the erection, alteration or improvement of a building or buildings for the purposes hereinafter set forth. The site or sites selected shall be conveniently located within such county seat and of an area in size sufficiently large to accomplish and effectuate the purpose of this Act and sufficient to provide for proper architectural setting and adequate landscaping for such building or buildings.

(1) Where the governing body of the county seat has adopted the original resolution for the creation of the Commission the site or sites selected shall be subject to approval by a majority of the members of the governing body of the county seat.

(2) Where the original resolution for the creation of the Commission has been adopted by the governing body of the county, the site or sites selected by the Commission shall be subject to approval by a majority of the members of the governing body of the county and to approval by three-fourths of the members of the governing body of the county seat; and, if such site or sites so selected shall not be approved by three-fourths of the members of the governing body of the county seat the Commission may by resolution request that the approval of the site or sites so selected be submitted to a referendum at the next general

county election, and shall present such resolution to the county clerk. Upon receipt of such resolution the county clerk shall immediately notify the board of election commissioners, if any; the county clerk or board of election commissioners, or both, shall give notice that at the next general county election, every elector may vote upon the proposition stated in the resolution and the clerk or board of election commissioners shall give such notice in the next legal notice of a general election in the county and provision shall be made by the county clerk or board of election commissioners for voting upon the proposition in accordance with the notice; provided however that elections pursuant to resolution shall not be called more frequently than once in 4 years. The ballot upon the proposition shall be in substantially the following form:

Shall ..... be acquired for the erection, alteration or improvement of a building or buildings pursuant to the Public Building Commission Act, approved July 5, 1955, which project it is estimated will cost $....., including the cost of the site acquisition and for the payment of which revenue bonds in the amount of $....., maturing ..... and bearing interest at the rate of .....% per annum, may be issued?	YES NO

If a majority of the electors vote in favor of the proposition, the site or sites so selected shall be approved. Except where approval of the site or sites has been obtained by referendum, the area or areas may be enlarged by the Board of Commissioners, from time to time, as the need therefor arises. The selection, location and designation of more than one area may, but need not, be made at one time but may be made from time to time.

(b) To acquire the fee simple title to the real property located within such area or areas, including easements and reversionary interests in the streets, alleys and other public

places and personal property required for its purposes, by purchase, gift, devise, or by the exercise of the power of eminent domain, and title thereto shall be taken in the corporate name of the Commission. Eminent domain proceedings shall be in all respects in accordance with an Act entitled "An Act to provide for the exercise of the right of eminent domain", approved April 10, 1872, as heretofore or hereafter amended. All land and appurtenances thereto, acquired or owned by the Commission are to be deemed acquired or owned for a public use or public purpose.

Any municipal corporation which organized or joined in the organization of the Commission and which owns fee simple title to real property located within such an area, may convey such real property, or any part thereof, to the Commission with a provision in such conveyance for the reverter of such real property to the transferor municipal corporation at such time as all revenue bonds and other obligations of the Commission incident to the real property so conveyed, have been paid in full, and such Commission is hereby authorized to accept such a conveyance.

(c) To demolish, repair, alter or improve any building or buildings within the area or areas and to erect a new building or buildings and other facilities within the area or areas. To furnish and equip the same, and maintain and operate such building or buildings and other facilities so as to effectuate the purposes of this Act.

(d) To pave and improve streets within such area or areas, and to construct, repair and install sidewalks, sewers, waterpipes and other similar facilities and site improvements within such area or areas and to provide for adequate landscaping essential to the preparation of such site or sites in accordance with the purposes of this Act.

(e) To make provisions for offstreet parking facilities.

(f) To operate, maintain, manage and to make and enter into contracts for the operation, maintenance and management of such buildings and other facilities and to provide rules and regulations for the operation, maintenance and management thereof.

(g) To employ and discharge without regard to any Civil Service Act, engineering, architectural, construction, legal and financial experts and such other employees as may be necessary in its judgment to carry out the purposes of this Act and to fix compensation for such employees, and enter into contracts for the employment of any person, firm, or corporation, and for professional services necessary or desirable for the accomplishment of the objects and purposes of the Commission and the proper administration, management, protection and control of its property.

(h) To rent all or any part or parts of such building, buildings or other facilities to any municipal corporation which organized or joined in the organization of the Public Building Commission or to any branch, department or agency thereof, or to any branch, department or agency of the State or Federal government, or to any other municipal corporation, quasi municipal corporation, political subdivision or body politic, or agency thereof, doing business, maintaining an office or rendering a public service in such county seat or county for any period of time, not to exceed 20 years.

(i) To rent such space in such building or buildings as from time to time may not be needed by any governmental agency for such other purposes as the Board of Commissioners may determine will best serve the comfort and convenience of the occupants of such building or buildings, and upon such terms and in such manner as the Board of Commissioners may determine.

(j) To execute written leases evidencing the rental agreements authorized in Clauses (h) and (i) of this section.

(k) To procure and enter into contracts for any type of insurance or indemnity against loss or damage to property from any cause, including loss of use and occupancy, against death or injury of any person, against employer's liability, against any act of any member, officer or employee of the Public Building Commission in the performance of the duties of his office or employment or any other insurable risk, as the Board of Commissioners in its discretion may deem necessary.

(l) To accept donations, contributions, capital grants or gifts from any individuals, associations, municipal and private corporations and the United States of America, or any agency or instrumentality thereof, for or in aid of any of the purposes of this Act and to enter into agreements in connection therewith.

(m) To borrow money from time to time and in evidence thereof to issue and sell revenue bonds in such amount or amounts as the Board of Commissioners may determine to provide funds for the purpose of acquiring, erecting, demolishing, improving, altering, equipping, repairing, maintaining and operating buildings and other facilities and to acquire sites necessary and convenient therefor and to pay all costs and expenses incident thereto, including, but without in any way limiting the generality of the foregoing, architectural, engineering, legal and financing expense, which may includ an amount sufficient to meet the interest charges on such revenue bonds during such period or periods as may elapse prior to the time when the project or projects may become revenue producing and for one year in addition thereto; and to refund and refinance, from time to time, revenue bonds so issued and

sold, as often as may be deemed to be advantageous by the Board of Commissioners.

(n) To enter into any agreement or contract with any Lessee, who, pursuant to the terms of this Act, is renting or is about to rent from the Commission all or part of any building or buildings or facilities, whereby under such agreement or contract said Lessee obligates itself to pay all or part of the cost of maintaining and operating the premises so leased. Such agreement may be included as a provision of any Lease entered into pursuant to the terms of this Act or may be made the subject of a separate agreement or contract between the Commission and such Lessee. (Amended by act approved August 4, 1961.)

Sec. 14.1. In addition to the permanent financing authorized by Sections 14 and 15 of this Act, the Board of Commissioners of any public building commission may borrow money and issue interim notes in evidence thereof, in the manner following:

(a) Whenever any area or site has been selected, located, designated and approved, as provided by Section 14 of this Act, and it is deemed advisable and in the interests of the Commission to borrow funds temporarily for the acquisition of the area or site in advance of permanent financing, the Board of Commissioners may from time to time and pursuant to appropriate resolution, issue interim notes to evidence borrowings for the purposes of obtaining funds, with which to acquire the area or site selected and approved for the erection, alteration or improvement of a building or buildings to be located thereon for the purposes provided for by this Act, including funds for payment of interest on such borrowings and funds for all necessary and incidental expenses in connection with said area or site until the date of the permanent financing. Any resolution authorizing the issuance of said notes shall de-

scribe the area or site to be acquired and shall specify the principal amount, rate of interest (not exceeding six per cent per annum) and maturity date which shall be the same for all interim notes but not to exceed five years from date of issue of the first of said notes so issued, and such other terms as may be specified in said resolution; provided, however, that time of payment of any such notes may be extended for a period of not exceeding two years from the maturity date thereof.

The Board of Commissioners may provide for the registration of the notes in the name of the owner either as to principal alone, or as to both principal and interest, on such terms and conditions as the Board may determine by the resolution authorizing their issue. The notes shall be issued from time to time by the Board of Commissioners as funds are borrowed, in the manner the Board of Commissioners may determine. Interest on the notes may be made payable semiannually, annually or at maturity. The notes may be made redeemable, prior to maturity, at the option of the Commission, in the manner and upon the terms fixed by the resolution authorizing their issuance. The notes may be executed in the name of the Commission by the Chairman of the Board of Commissioners or by any other officer or officers of the Commission as the Board by resolution may direct, shall be attested by the Secretary or such other officer or officers of the Commission as the Board may by resolution direct, and be sealed with the Commission's corporate seal. All said notes and the interest thereon may be secured by a pledge of any income and revenue derived by the Commission from the property to be acquired with the proceeds of the notes, after deducting from such income and revenue any reasonable and necessary maintenance and operation expenses, and shall be payable solely from said income and revenue and from the proceeds to be derived from the sale of any revenue

bonds for permanent financing authorized to be issued under Sections 14 and 15 of this Act, and from the property acquired with the proceeds of the notes.

Contemporaneously with the issue, as provided by this Act, of revenue bonds all interim notes, even though they may not then have matured, shall be paid, both principal and interest to date of payment, from the funds derived from the sale of revenue bonds for the permanent financing and such interim notes shall be surrendered and canceled.

(b) The Commission, in order further to secure the payment of the interim notes, is, in addition to the foregoing, authorized and empowered to do the following:

1. Pledge or mortgage all or any part of the property to be acquired with the proceeds of the interim notes, or provide otherwise for the sale, public or private and with or without notice, of all or any part of the property, in the event of default in payment of principal of or interest on the interim notes or on any covenant or agreement of the Commission in connection with the interim notes, and in the event of any such default to permit the acceleration of the maturity of the interim notes. Except with respect to the funds derived from revenue bonds, as hereinabove provided, no pledge, mortgage or provision for the sale of any property shall relate to any property, other than the property to be acquired with the proceeds of any and all said interim notes, and any net income and revenue derived from the property.

2. Covenant against pledging or mortgaging or otherwise disposing of all or any part of or interest in the property to be acquired with proceeds of the interim notes, or any net income derived from the property; and against permitting or suffering any lien on the property or said net income; and against any borrowings or incurring liabilities in addition to the borrowings and liabilities,

evidenced by the interim notes, prior to the issuance of revenue bonds; and against the issue of interim notes in excess of a specified principal amount; and against preference of any interim note over any other interim note as to payment of interest or principal; and against making any substitutions for or additions or improvements to said property except with the proceeds derived from borrowings evidenced by any and all said interim notes, or with the net income derived from said property.

3. Make any other or additional covenants, terms and conditions not inconsistent with the provisions of subparagraph (a) of this Section, and do any and all acts and things as may be necessary or convenient or desirable in order to secure payment of its interim notes, or, in the discretion of the Commission, as will tend to make the interim notes more acceptable to lenders, notwithstanding that the covenants, acts or things may not be enumerated herein; provided, however, that nothing contained in this subparagraph shall authorize the Commission to secure the payment of the interim notes out of property, other than the property acquired with the proceeds of the interim notes, and any net income and revenue derived from the property and the proceeds of revenue bonds as hereinabove provided.

(c) The interim notes shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

(d) No member, officer, agent or employee of the Commission, nor any other person who executes interim notes, shall be liable personally thereon by reason of the issuance thereof. (Added by act approved August 4, 1961.)

Sec. 15. Whenever and as often as the Board of Commissioners determines to issue bonds as provided in this Act, it shall adopt a resolution describing the area to be

acquired, the nature of the improvements thereon, the disposition to be made of such improvements and a description of any new buildings or other facilities to be constructed thereon. Such description shall not prohibit the Board of Commissioners from making such minor changes as may be necessary or convenient in the discretion of the Board of Commissioners.

The resolution shall set out the estimated cost of the project, including the cost of acquiring the site therefor, determine the period of usefulness and fix the amount of revenue bonds to be issued, the date or dates of maturity, the dates on which interest is payable, the sinking fund provisions and all other details in connection with such bonds. The Board shall determine and fix the rate of interest of any revenue bonds issued hereunder, in such trust agreement or other contract entered into with the resolution or in any supplemental resolution adopted by the Board prior to the issuance thereof. The resolution, trust agreement, or other contract entered into with the bondholders may contain such covenants and restrictions concerning the issuance of additional revenue bonds thereafter as may be deemed necessary or advisable for the assurance of the payment of the bonds thereby authorized.

All bonds shall be issued in the name of the Public Building Commission and shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the laws of this State.

Bonds issued under this Act, whether original issue or issues or refunding, may be issued as serial or term bonds, shall be of such denomination or denominations and form, including interest coupons to be attached thereto, shall be payable at such place or places and bear such date as the Board of Commissioners shall fix by the resolution authorizing such bonds and shall mature within a period not to exceed forty (40) years, and may be redeemable prior to

maturity with or without premium, at the option of the Board of Commissioners, upon such terms and conditions as the Board of Commissioners shall fix by the resolution authorizing the issuance of such bonds. The Board of Commissioners may provide for the registration of such bonds in the name of the owner as to the principal alone or as to both principal and interest upon such terms and conditions as the Board of Commissioners may determine. All bonds issued hereunder by any Public Building Commission shall be sold at such price that the interest cost to the Commission of the proceeds of such bonds shall not exceed six per cent (6%) per annum, payable semi-annually, computed to maturity and shall be sold in such manner and at such time or times as the Board of Commissioners shall determine.

Bonds issued by a Public Building Commission, and the interest thereon, shall be payable solely from the revenues derived from the operation, management or use of the buildings or other facilities acquired or to be acquired by the Commission, which revenues shall include payments received under any leases or other contracts for the use of the facilities, buildings or space therein. All bonds shall recite in the body thereof that the principal and interest thereon are payable solely from the revenues pledged to pay the same and shall state on their face that it is not an indebtedness of the Commission or a claim against the property of such Commission.

The bonds shall be executed in the name of the Commission by the Chairman of the Board of Commissioners or by such other officer of the Commission as the Board, by resolution, may direct, and be attested by the Secretary, or by such other officer of the Commission as the Board, by resolution, may direct, and shall be sealed with the Commission's corporate seal. The interest coupons attached to such bonds shall be executed by the facsimile

signatures of the persons who shall execute the bonds. The Chairman and Secretary or other officers of the Commission executing the bonds shall adopt for their own signatures, their respective facsimile signatures appearing on such coupons. In case any officer whose signature appears on the bonds or coupons shall cease to be such officer before delivery of such bonds, such signature shall nevertheless be valid and sufficient for all purposes, the same as if said officer had remained in office until such delivery.

In its discretion, the Public Building Commission may, from time to time, as often as it may deem to be advantageous, issue refunding bonds to refund its bonds prior to their maturity, refund its outstanding matured bonds, refund matured coupons evidencing interest upon its outstanding bonds, refund interest at the coupon rate upon its outstanding matured bonds that has accrued since the maturity thereof, and refund its bonds which by their terms are subject to call or redemption before maturity. All bonds redeemed or purchased in accordance with this Act shall forthwith be cancelled and shall not be used again.

To secure the payment of any or all revenue bonds and for the purpose of setting forth the covenants and undertakings of the Commission in connection with the issuance of revenue bonds and the issuance of any additional revenue bonds payable from such revenue income to be derived from the operation, management or use of the buildings or other facilities acquired or to be acquired by the Commission, the Commission may execute and deliver a trust agreement or agreements except that no lien upon any physical property of the Commission shall be created thereby.

The proceeds from the sale of bonds hereunder shall be paid to the Treasurer of the Public Building Commission or, in the event that a trust agreement is executed and delivered by the Commission, then and in such event, the

proceeds from the sale of bonds hereunder shall be paid to the trustee or trustees specified in any such trust agreement. If the proceeds from the sale of the bonds issued hereunder shall exceed the cost of the project, the Public Building Commission shall place such excess funds in the sinking fund created for making payment of principal or interest of such bonds as the same matures or for the purchase of outstanding bonds at such times and in such manner as may be provided in the resolution authorizing the issuance of such bonds, or in any trust agreement or contract entered into with the bondholders.

The resolution shall provide for the creation of a sinking fund account into which shall be payable from the revenues of such project, from month to month as such revenues are collected, such sums in excess of the cost of maintenance and operation of the project and the costs of administration of the Commission, as will be sufficient to comply with the covenants of the bond resolution and sufficient to pay the accruing interest and retire the bonds at maturity. The Board of Commissioners, in such resolution, may provide for such other accounts as it may deem necessary for the sale of the bonds. The monies in said accounts shall be applied in the manner provided by the resolution, the trust agreement or other contract with the bondholders.

No bond issued under this Act shall constitute a debt of the Commission or of any public body within the meaning of any statutory of constitutional limitation as to debt.

From and after the issuance of bonds as herein provided it shall be the duty of the Board of Commissioners to establish and fix rates, rentals, fees and charges for the use of any and all buildings or space therein or other facilities owned and operated by the Commission; sufficient at all times to pay maintenance and operation costs and

to pay the accruing interest and retire the bonds at maturity and to make all payments to all accounts created by any bond resolution and to comply with all covenants of any bond resolution.

Sec. 16. Any trust agreement or agreements entered into with or for the benefit of the bondholders may prescribe by whom or on whose behalf action may be taken by the bondholders, and in the absence of any such provision in the trust agreement or agreements, any holder of a bond or bonds, or of any of the coupons of any bond or bonds, issued under the provisions of this Act, subject only to a contractual restriction binding upon any such bondholder or holders, may:

(a) By mandamus, suit, action or proceeding at law or in equity, compel the Commission, and the member or members, officers, agents or employees thereof, to perform each and every term, provision and covenant contained in any resolution, trust agreement or contract with or for the benefit of such bondholder, and to require the carrying out of any or all such covenants and agreements of the Commission and the fulfillment of all duties imposed upon said Commission by this Act.

(b) By suit, action or proceeding in equity, sue to enjoin any acts or things which may be unlawful, or in violation of any of the rights of said bondholder.

Sec. 17. The State and all counties, cities, villages, incorporated towns and other municipal corporations, political subdivisions and public bodies, and public officers of any thereof, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administra-

tors, guardians, trustees and other fiduciaries may legally invest any sinking funds, monies or other funds belonging to them or within their control in any revenue bonds issued pursuant to this Act, it being the purpose of this section to authorize the investment in such revenue bonds of all sinking, insurance, retirement, compensation, pension and trust funds, whether owned or controlled by private or public persons or officers.

Sec. 18. Whenever, and as often as a municipal corporation having taxing power enters into a lease with a Public Building Commission, the governing body of such municipal corporation shall provide by ordinance or resolution, as the case may be, for the levy and collection of a direct annual tax sufficient to pay the annual rent payable under such lease as and when it becomes due and payable. A certified copy of the lease of such municipal corporation and a certified copy of the tax levying ordinance or resolution, as the case may be, of such municipal corporation shall be filed in the office of the county clerk in each county in which any portion of the territory of such municipal corporation is situated, which certified copies shall constitute the authority for the county clerk or clerks, in each case, to extend the taxes annually necessary to pay the annual rent payable under such lease as and when it becomes due and payable. Upon such filing in the office of the county clerk or clerks of the proper county, it shall be the duty of such county clerk or clerks to ascertain the rate per cent which, upon the full, fair cash value of all property subject to taxation within the municipal corporation, as that property is assessed or equalized by the Department of Revenue, will produce a net amount of not less than the amount of the annual rent reserved in such lease. The county clerk or clerks shall thereupon, and thereafter annually during the term of the lease, extend taxes against all of the taxable property contained in that municipal

corporation sufficient to pay the annual rental reserved in such lease. Such tax shall be levied and collected in like manner with the other taxes of such municipal corporation and shall be in addition to all other taxes now or hereafter authorized to be levied by that municipal corporation. This tax shall not be included within any statutory limitation of rate or amount for that municipal corporation but shall be excluded therefrom and be in addition thereto and in excess thereof. The fund realized from such tax levy shall be set aside for the payment of the annual rent and shall not be disbursed for any other purpose until the annual rental has been paid in full. The foregoing shall not be construed to limit the power of the Commission to enter into leases with any municipal corporation whether or not the municipal corporation has the power of taxation.

Sec. 19. Any contract let for the construction, repair, alteration, or improvement of any building or buildings, the demolition thereof, or removal of debris resulting therefrom, or any other contract let for any other type of construction or repair work, shall contain provisions requiring the contractor or other person, firm or corporation undertaking such work to give bond in such amount and with such surety, conditioned for the faithful performance of the contract as the Board of Commissioners may determine. The Board of Commissioners shall also require such contractor or other persons, firm or corporation to furnish insurance of a character and amount to be determined by the Board of Commissioners, protecting the Commission, its Commissioners, officers, agents, and employees, against any claims for personal injuries (including death) and property damage that may be asserted because of the doing of the work.

Sec. 20. All contracts to be let for the construction, alteration, improvement, repair, enlargement, demolition or removal of any buildings or other facilities, or for mate-

rials or supplies to be furnished, where the amount thereof is in excess of $2,500.00, shall be let to the lowest responsible bidder, or bidders, on open competitive bidding after public advertisement published at least once in each week for three consecutive weeks prior to the opening of bids, in a daily newspaper of general circulation in the county where the commission is located. Nothing contained in this Section shall be construed to prohibit the Board of Commissioners from placing additional advertisements in recognized trade journals. Advertisements for bids shall describe the character of the proposed contract in sufficient detail to enable the bidders thereon to know what their obligation will be, either in the advertisement itself, or by reference to detailed plans and specifications on file in the office of the Public Building Commission at the time of the publication of the first announcement. Such advertisement shall also state the date, time, and place assigned for the opening of bids and no bids shall be received at any time subsequent to the time indicated in said advertisement. The Board of Commissioners may reject any and all bids received and readvertise for bids. All bids shall be open to public inspection in the office of the Public Building Commission for a period of at least forty-eight (48) hours before award is made. The successful bidder for such work shall enter into contracts furnished and prescribed by the Board of Commissioners and in addition to any other bonds required under this Act the successful bidder shall execute and give bond, payable to and to be approved by the Commission, with a corporate surety, authorized to do business under the laws of the State of Illinois, in an amount to be determined by the Board of Commissioners, conditioned upon the payment of all labor furnished and materials supplied in the prosecution of the contracted work. If the bidder whose bid has been accepted shall neglect or refuse to accept the contract within five (5) days after written notice

that the same has been awarded to him, or if he accepts but does not execute the contract and give the proper security, the Commission may accept the next lowest bidder, or readvertise and relet in manner above provided. In case any work shall be abandoned by any contractor the Commission may, if the best interests of the Commission be thereby served, adopt on behalf of the Commission all sub-contracts made by such contractor for such work and all such sub-contractors shall be bound by such adoption if made; and the Commission shall, in the manner provided herein, readvertise and relet the work specified in the original contract exclusive of so much thereof as shall be accepted. Every contract when made and entered into, as herein provided for, shall be executed in duplicate, one copy of which shall be held by the Commission, and spread on its records, and one copy of which shall be given to the contractor.

Sec. 21. All leases, contracts, deeds of conveyance, or instruments in writing executed by the Commission, shall be executed in the name of the Commission by the Chairman and Secretary of the Commission, or by such other officers as the Board of Commissioners, by resolution, may direct, and the seal of the Authority shall be affixed thereto.

Sec. 22. All property of the Public Building Commission shall be exempt from taxation by the State or any taxing unit therein.

Sec. 22.1. Any Public Building Commission which has not issued any bonds and has no indebtedness may be dissolved upon the filing, by the presiding officer of the county seat or county board which organized such Commission, in the office of the Recorder of Deeds a copy of a resolution adopted by the governing body of such county seat or county board approving such dissolution. (Added by Act approved May 16, 1957.)

Sec. 23. The provisions of this Act and the applications thereof to any person or circumstance are declared to be severable.

If any section, clause, sentence, paragraph, part or provision of this Act shall be held to be invalid by any Court, it shall be conclusively presumed that the remaining portions of this Act would have been passed by the Legislature without such invalid section, clause, sentence, paragraph, part or provision.

If the application of any section, clause, sentence, paragraph, part or provision of this Act to any person or circumstance is held invalid, such invalidity shall not affect the application thereof to other persons or circumstances.

Sec. 24. This Act being necessary for or desirable for and intended to secure the public convenience and welfare, the provisions of this Act shall be liberally construed to give effect to the provisions hereof.

APPENDIX C.

SECTION 10, EMINENT DOMAIN ACT OF APRIL 10, 1872.
(Chapter 47, Section 10, Illinois Revised Statutes, 1961.)

"10. [FINAL JUDGMENT.] § 10. (a) If the petitioner is not in possession pursuant to an order entered under the provisions of Section 2.3 of this Act the judge or court, upon such report, or upon the court's ascertainment and finding of the just compensation where there was no jury, shall proceed to adjudge and make such order as to right and justice shall pertain, ordering that petitioner enter upon such property and the use of the same upon payment of full compensation as ascertained as aforesaid, within a reasonable time to be fixed by the court, and such order, with evidence of such payment, shall constitute complete justification of the taking of such property. Provided, that if in such case the petitioner shall dismiss said petition before the entry of such order or shall fail to make payment of full compensation within the time named in such order, that then such court or judge shall, upon application of the defendants to said petition or either of them, make such order in such cause for the payment by the petitioner of all costs, expenses and reasonable attorney fees of such defendant or defendants paid or incurred by such defendant or defendants in defense of said petition, as upon the hearing of such application shall be right and just, and also for the payment of the taxable costs.

"(b) In case the petitioner is in possession pursuant to an order entered under the provisions of Section 2.3 of this Act and if Section 2.9 of this Act is inapplicable, then the court, upon the jury's report, or upon the court's deter-

mination of just compensation if there was no jury, shall proceed to enter an order setting forth the amount of just compensation so finally ascertained and ordering and directing the payment of any amount thereof that may remain due to any of the interested parties, directing the return of any excess in the deposit remaining with the clerk of the court, and directing the refund of any excess amount withdrawn from the deposit by any of the interested parties, as the case may be. As amended by act approved July 11, 1957. L. 1957, p. 2603."

Office-Supreme Court, U.S.
FILED
JUN 11 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 149

PEERLESS WEIGHING AND VENDING MACHINE CORPORATION, A CORPORATION,

Appellant,

vs.

PUBLIC BUILDING COMMISSION OF CHICAGO, A MUNICIPAL CORPORATION,

Appellee.

ON APPEAL FROM THE THREE JUDGE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

MOTION OF APPELLEE, PUBLIC BUILDING COMMISSION OF CHICAGO, TO DISMISS.

WILLIAM R. DILLON,
Attorney for Appellee,
PUBLIC BUILDING COMMISSION OF CHICAGO,
a Municipal Corporation.

CONCANNON DILLON SNOOK & MORTON,
111 West Washington Street,
Chicago 2, Illinois,
Of Counsel.

THE BLAKELY-HARRIS PRINTING COMPANY, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. .....

PEERLESS WEIGHING AND VENDING MACHINE CORPORATION, A CORPORATION,

Appellant,

vs.

PUBLIC BUILDING COMMISSION OF CHICAGO, A MUNICIPAL CORPORATION,

Appellee.

ON APPEAL FROM THE THREE JUDGE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

MOTION OF APPELLEE, PUBLIC BUILDING COMMISSION OF CHICAGO, TO DISMISS.

Appellee, Public Building Commission of Chicago, submits this Motion to Dismiss the direct Appeal sought to be taken by the Appellant, Peerless Weighing and Vending Machine Corporation, from the decision of a Three Judge Federal District Court on the ground that the Appeal is not within the jurisdiction of the Supreme Court of the United States because the Notice of Appeal was not filed in the District Court within 60 days as required by Title 28, United States Code, Section 2101(b).

STATEMENT.

As noted in Appellant's Jurisdictional Statement[1] this is an Appeal sought to be taken directly to this Court by the Appellant from the decision of the Three Judge District Court for The Northern District of Illinois, Eastern Division, denying, after hearing, Appellant's request for a permanent injunction to restrain the Appellee, its agents, employees and representatives from proceeding with an eminent domain proceeding theretofore filed by the Appellee in the Circuit Court of Cook County, Illinois, against the Appellant and others under and by virtue of the provisions of the Public Building Commission Act of Illinois.[2] The Appellant, in seeking its injunction to restrain proceedings in the State Court, urged that Section 14.1 of that Act was unconstitutional and void under Section 1 of the Fourteenth Amendment to the Constitution of the United States. As also noted in Appellant's Jurisdictional Statement[3] the Three Judge District Court was convened pursuant to the provisions of Title 28 United States Code, Sections 2281 and 2284.

The Judgment of the Three Judge District Court denying Appellant's request for a permanent injunction and dismissing Appellant's cause of action was entered on February 14, 1962[4] and the Appellant thereafter filed its Notice

1. Appellant's Jurisdictional Statement, pp. 2-3.

2. 1961 Illinois Revised Statutes, Chapter 34, Sections 3301 to 3325. See Appellant's Jurisdictional Statement, Appendix B, pp. 33 to 63.

3. Appellant's Jurisdictional Statement, p. 2.

4. R 3; 361; See, also: Appellant's Jurisdictional Statement, p. 2.

of Appeal in the District Court on to-wit, Tuesday, April 17, 1962,[5] a time interval of 62 days between the entry of the final judgment and the filing of the Notice of Appeal.

ARGUMENT.

This Appeal Must Be Dismissed Because the Notice of Appeal Was Not Filed Within 60 Days as Required by Title 28, United States Code, Section 2101(b).

Rule 11(3) of this Court provides that "An appeal in all other cases shall be in time when the notice of appeal prescribed by Rule 10 is filed with the Clerk of the appropriate court within the time allowed by law for taking such appeal." Paragraph 1(a) of Rule 16 of this Court provides: "The Court will receive a motion to dismiss any appeal on the ground that the appeal is not within the jurisdiction of this Court, because not taken in conformity to statute or to these rules."

The jurisdiction of the Supreme Court of the United States to review the decision of a three judge district court is conferred by Title 28, United States Code, Section 1253. To secure this right of direct appeal, however, a Notice of Appeal must be filed within the prescribed time limitations in conformity to statute as provided in Rule 11(3) of this Court, *supra*.

The time within which *direct* appeals shall be taken to the Supreme Court of the United States are set forth in Title 28, United States Code, Section 2101(a) and 2101(b), the latter subsection of which provides as follows:

"§ 2101(b) Any other *direct* appeal to the Supreme

5. R 3; 373; See, also: Appellant's Jurisdictional Statement, p. 2.

Court which is authorized by law, from a decision of a district court in any civil action, suit or proceedings, shall be taken within thirty days from the judgment, order or decree, appealed from, if interlocutory, and within sixty days if final."

This Court has consistently held that the time within which direct appeals shall be taken to the United States Supreme Court under Title 28, United States Code, Section 1253 are governed by Title 28, United States Code, Section 2101(b) *supra*. *Frozen Food Express* v. *United States*, 351 U. S. 40, 43; *East Texas Lines* v. *Frozen Food Express*, 351 U. S. 49, 51; *Dixie Carriers* v. *United States*, 351 U. S. 56, 58; *Denver & R. G. W. Co.* v. *Union P. R. Co.*, 351 U. S. 321, 327; *King* v. *United States*, 344 U. S. 254, 260; *Henderson* v. *United States*, 339 U. S. 816, 822, 823.

It has likewise been consistently held that the filing of a timely notice of appeal is a jurisdictional prerequisite and that if the Notice of Appeal is not filed within time the reviewing court is without jurisdiction. *Wagoner* v. *Fairview Consolidated School District No. 5* (United States Court of Appeals, Tenth Circuit, 1961), 289 Fed. 2d 480, 481; *Schlink* v. *Chesapeake & Ohio Railway Co.* (United States Court of Appeals, Sixth Circuit, 1960), 276 Fed. 2d 116, 117; *Gunther* v. *E. I. DuPont De Nemours & Company* (United States Court of Appeals, Fourth Circuit, 1958), 255 Fed. 2d 710, 715.

Conclusion.

The Appellant, Peerless Weighing and Vending Machine Corporation, not having filed its Notice of Appeal within sixty days as required by Title 28, United States Code, Section 2101(b), this Court is without jurisdiction and the Appeal must therefore be dismissed.

Respectfully submitted,

WILLIAM R. DILLON,
Attorney for Appellee,
PUBLIC BUILDING COMMISSION
OF CHICAGO,
a Municipal Corporation.

CONCANNON DILLON SNOOK & MORTON,
111 West Washington Street,
Chicago 2, Illinois,
Of Counsel.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUN 27 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 117

PEERLESS WEIGHING AND VENDING MACHINE CORPORATION, A CORPORATION,

Appellant,

vs.

PUBLIC BUILDING COMMISSION OF CHICAGO, A MUNICIPAL CORPORATION,

Appellee.

ON APPEAL FROM THE THREE JUDGE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

REPLY TO APPELLEE'S MOTION TO DISMISS.

LOUIS M. MANTYNBAND,
SIDNEY R. ZATZ,
IRWIN I. ZATZ,
EDWARD J. HLADIS,
One North La Salle Street,
Chicago 2, Illinois,
Attorneys for Appellant.

ARVEY, HODES & MANTYNBAND,
Of Counsel.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 968

PEERLESS WEIGHING AND VENDING MACHINE CORPORATION, A CORPORATION,

Appellant,

vs.

PUBLIC BUILDING COMMISSION OF CHICAGO, A MUNICIPAL CORPORATION,

Appellee.

ON APPEAL FROM THE THREE JUDGE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

REPLY TO APPELLEE'S MOTION TO DISMISS.

The argument in support of the Appellee's motion to dismiss is specious. This Court has never held that the time within which a direct appeal from the judgment of a three judge court in a case involving the constitutional validity of a State statute must be taken pursuant to the provisions of 28 U. S. C. 2101(b) rather than 2101(c). As far as can be determined, this Court has never been faced with this question. The cases advanced by Appellee in support of its motion demonstrate only that in each

of those cases the respective appellants assumed that the time period was controlled by 28 U. S. C. 2101(b). In none of those cases was this Court required to decide the precise question of timeliness.

We respectfully submit that the law, as it is now written, is clear that appellants have ninety days from the entry of a three judge court decree in a proceeding involving the constitutional validity of a State statute within which to prosecute their appeal.

Prior to the enactment of the Judicial Code of June 25, 1948, the time for taking an appeal to this Court was governed by the provisions of former 28 U. S. C. 350 (1940 Ed.). These provisions stated the general rule that applications for appeals to this Court were to be made within three months of the entry of the final judgment or decree. There were, however, other special statutes which reduced the time limitations for appeals in certain types of cases. The Expediting Act of 1903 provided for reduced time limitations in certain cases. An appeal under that Act had to be brought within sixty days (58 Stats. 272). It was limited to actions brought by the United States under the Anti-Trust laws (15 U. S. C. 28, 29), the Interstate Commerce Act (49 U. S. C. 44, 45), the Communications Act of 1934 (47 U. S. C. 401 (d)) and other federal statutes which incorporated the Expediting Act. In each instance, the Congressional intent was explicit. In addition to this Act, the Judicial Code prior to 1948 provided that an appeal from an adverse interlocutory order entered in an injunctive proceeding to challenge an order of the Interstate Commerce Commission had to be taken within thirty days. An appeal from a final order in that type of proceeding had to be taken within sixty days (28 U. S. C. 47, 47(a) (1940 Ed.)). These special appeal Acts were never applied to a three judge court proceeding which involved the constitutional validity of a State statute. Appeals from

such three judge court decisions were controlled by the three month provision of former 28 U. S. C. 350 (1940 Ed.). The successor statute in the 1948 Judicial Code, namely, 28 U. S. C. 2101(c), re-enacts the provisions of the prior statute and merely changes it from a three month period to ninety days. In all other respects it re-enacts the prior procedure.

It must be noted that prior to 1948 the reduced time periods for an appeal to this Court were clearly an exception to the general rule of three months. Furthermore, this reduction of the time period was applicable to certain cases which were exclusively federal in nature, such as actions under the Anti-trust laws, Interstate Commerce Act, and the like. Congress apparently deemed it necessary to expedite the final judicial determination of this explicitly designated and exclusively federal business. These exceptional provisions never controlled an appeal from a decision of a three judge court involving a constitutional attack upon a State statute. Appeals in this type of proceeding fell within the purview of the three month provision of 28 U. S. C. 350 (1940 Ed.).

There is no indication that by its enactment of the Judicial Code of 1948 Congress intended to extend the reduced time limitation contained in the Expediting Act of 1903 to actions involving the constitutionality of State statutes. To so hold would represent a radical departure from the traditional purpose of the Expediting Act of 1903, namely, the prompt and early disposition of those matters arising out of the aforesaid Federal statutes which are within the exclusive jurisdiction of the federal courts. It would seem that if Congress did so intend, such intention would be clearly expressed in the Act.

No such language is found in subsection (b) of Title 28 of the United States Code, Section 2101. That section

refers to a "direct appeal to the Supreme Court, which is authorized by law from a decision of a *district court* in any civil action, suit or proceeding, etc." The use of the phrase "district court" has a precise meaning. Section 132(b), Title 28 of the United States Code specifies that "Each district shall consist of a district judge." A district court, then, is a court over which a district judge presides. In all legislation relative to actions which must be heard by three judges, Congress consistently uses the phrase "district court of three judges." (28 U. S. C. Sections 2281-2284.) In the Congressional provision for a direct appeal to this Court, again the phrase "district court of three judges" is used (28 U. S. C. 1253). In subsection (a) of U. S. C. 2101, Congress expressly refers to other statutory enactments which use the phrase "district court of three judges." It is self-evident from reading the statutes that a district court of three judges is different from a "district court"; it is not a district court. In fact a three judge court may be constituted with two judges from the Court of Appeals together with a district judge (28 U. S. C. 2284(1).

A three judge court is truly a special court. This Court has so held, *Ex Parte Bransford*, 310 U. S. 354. The statute itself distinguishes the two types of courts. They are not synonymous.

It is a fact that under present procedure a direct appeal to this Court can be had in a case held by a single district judge (15 U. S. C. 28, 29; 49 U. S. C. 44, 45). It is apparent that subsection (b) applies only to those special federal cases which were formerly controlled by the Expediting Act of 1903. There is no indication that it was broadened to include the "State cases," *i. e.* cases challenging local action under state statutes, to which the Expediting Act never applied.

This proceeding concerns Appellant's fundamental constitutional rights and it presents questions of national importance. Its right to have an adverse decision reviewed by this Court should not arbitrarily be denied by Appellee's strained construction of the statute. To adopt the Appellee's contention, one must ascribe a broader application of the the Expediting Act of 1903 than Congress intended. One must extend that Act beyond the specified number of federal cases to which it traditionally applied, namely, actions by the Federal Government under the Anti-Trust Laws, the Interstate Commerce Act, and like and similar statutes. In the absence of an express indication that Congress intended so to do, the Appellee's contention should not be sustained and its motion to dismiss should be denied.

Respectfully susbmitted,

LOUIS M. MANTYNBAND,
SIDNEY R. ZATZ,
IRWIN I. ZATZ,
EDWARD J. HLADIS,
One North La Salle Street,
Chicago 2, Illinois,
Attorneys for Appellant.

ARVEY, HODES & MANTYNBAND,
Of Counsel.